

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON EDUCATION AND CULTURAL RESOURCES**

**Call to Order:** By **CHAIRMAN BILL GLASER**, on March 7, 2003 at 3:00 P.M., in Room 317-C Capitol.

**ROLL CALL**

**Members Present:**

Sen. Bill Glaser, Chairman (R)  
Sen. Bob Story Jr., Vice Chairman (R)  
Sen. Jerry W. Black (R)  
Sen. Edward Butcher (R)  
Sen. Mike Cooney (D)  
Sen. Jim Elliott (D)  
Sen. Royal Johnson (R)  
Sen. Don Ryan (D)  
Sen. Tom Zook (R)

**Members Excused:** Sen. Jeff Mangan (D)

**Members Absent:** None.

**Staff Present:** Tari Elam, Committee Secretary  
Connie Erickson, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 135, 2/25/2003; HB 154,  
2/25/2003  
Executive Action: HB 135; HB 154; HB 400

HEARING ON HB 135

Sponsor: REPRESENTATIVE JOAN ANDERSEN

Proponents: Erik Burke, MEA-MFT  
Bob Vogel, Director of Government Relations,  
Montana School Boards Association (MTSBA)

Opponents: NONE

Informational Witnesses: Bob Runkel, Director of Special  
Education, Office of Public Instruction  
(OPI), on behalf of the State  
Superintendent of Public Instruction  
Kathy Fabiano, Assistant Superintendent,  
Office of Public Instruction (OPI)

Opening Statement by Sponsor:

*{Tape: 1; Side: A; Approx. Time Counter: 0.7 - 3.1}*

REPRESENTATIVE JOAN ANDERSEN, HD 23, Carbon County, brought forward a bill which authorizes a school district to use its' tuition fund to pay the costs for a resident student who enrolls in a day-treatment program under an approved individualized education program (IEP) at a private nonsectarian school located in or outside of the student's resident district. She explained the bill arises because a number of schools presently have students in this category for whom general fund dollars are being used to pay for services for those students. She noted an IEP has the force of law; thus, a district must provide services identified by the child study team as necessary. For example, at present, there is a cost of approximately \$8,500 to send a student Yellowstone Treatment Center and the money is coming out of the school's general fund. This bill will allow the portion of cost not covered by ANB to be charged against a school's tuition account. **REP. ANDERSEN** noted the tuition fund is a permissive fund, however, she does not believe taking money from the general fund for all students to cover these costs is fair.

Proponents' Testimony:

*{Tape: 1; Side: A; Approx. Time Counter: 3.3 - 4.3}*

Erik Burke, MEA-MFT, conveyed his organization's support of the bill. He expressed his appreciation to **REP. ANDERSEN** for

bringing forward a bill which he believes truly helps children. Although the group of children is fairly narrow, this bill provides a good way to ensure the provision of services and pay for the related costs. **Mr. Burke** urged the Committee recommend Do Concur on the bill.

**Bob Vogel, Director of Government Relations, MTSBA**, conveyed his organization's support of the bill. **Mr. Vogel** believes the sponsor did an excellent job on the bill's construction and it is in the best interest for the children involved. He hopes the Committee will recommend Do Concur.

**Informational Testimony:**

*{Tape: 1; Side: A; Approx. Time Counter: 4.7 - 7.0}*

**Bob Runkel, Director of Special Education, OPI, on behalf of Linda McCulloch**, stated services to children with emotional disturbances present a significant challenge to public schools. Not all of these children can be educated in either a typical classroom or a special, contained classroom for children in special education. Occasionally, a child will need the intensive care that must be provided through a day treatment program. **Mr. Runkel** stated this bill addresses those children's specific emotional needs and allows placement to be made in day treatment facilities. And, although a very narrow group of children, this bill provides a vehicle for financing those types of placements. He also explained, due to budget cuts, some children have been returned from out-of-state treatment centers; some of these children have severe and urgent needs. He also indicated costs for these types of services are increasing.

**Mr. Runkel** stated **Kathy Fabiano, Assistant Superintendent, OPI**, was present for questions regarding tuition.

**Questions from Committee Members and Responses:**

*{Tape: 1; Side: A; Approx. Time Counter: 7.2 - 13.4}*

**SENATOR TOM ZOOK** asked about **Ms. Fabiano's** participation in the writing of the fiscal note. **Ms. Fabiano** indicated she was a participant. **SEN. ZOOK**, referring to projected long-range impacts, asked if she thought a large number of districts will take advantage of this opportunity. **Ms. Fabiano**, noting the question may be more appropriately directed to **Mr. Runkel**, stated because a student's placement requires an IEP the decision will be made by more than one individual.

**SENATOR BOB STORY** asked if it is correct that school districts are presently counting these students as a part of their ANB counts. **Mr. Runkel** replied to the best of his knowledge **SEN. STORY's** was correct.

**SEN. STORY** asked if, subsequent to enactment, a school will no longer count the child in their ANB calculations, but the state will be reimburse their tuition for up to the amount of ANB. **Ms. Fabiano** explained school districts are presently allowed to count these students for ANB purposes if the student is placed under an IEP in an private accredited school or if the school district is providing the instruction. The fiscal note assumes these students are included in ANB counts. Under the bill these students would not be included in enrollment counts. Rather, a school district will report these students separately and the state will calculate what the district's aid would have been had the students been enrolled. The state will then reimburse the school for the difference. **SEN. STORY** stated he was not aware of how school districts were counting these students, asking if it was through rule. **Ms. Fabiano** replied by administrative rule a school district may count these students in their October and February counts if the facility is an accredited facility. **SEN. STORY** asked whether the rule will be changed to avoid potential double-dipping. **Ms. Fabiano** replied in the affirmative.

**SENATOR DON RYAN**, referring to **Ms. Fabiano's** testimony regarding accredited facilities, asked whether the reference is specifically to an accredited educational facility. **Ms. Fabiano** replied in the affirmative. **SEN. RYAN** asked about the average length of placement for these students. **Ms. Fabiano** deferred to **REP. ANDERSEN**. **REP. ANDERSEN** replied students who are placed in these facilities are generally placed there for the entire school year. **Mr. Runkel** explained the typical placement is approximately one to two years. **SEN. RYAN**, providing an example of a student who is placed during their freshman year, thus not appearing on enrollment counts, asked whether it is normal for this student to return to the school or does this become a three to four year commitment. He explained the reason for his question arises from the knowledge that if the student is not counted during their freshman year, the fiscal impact will occur during their sophomore year when they return. **Mr. Runkel** replied **SEN. RYAN's** assertion was correct, however, if a student attends during their senior year the school will receive ANB the subsequent year because ANB is essentially paid in arrears.

**Closing by Sponsor:**

**{Tape: 1; Side: A; Approx. Time Counter: 13.5 - 14.6}**

**REP. ANDERSEN** expressed her appreciation to those who appeared to assist with her presentation of the bill. She relayed a story about being a member of a child study team, noting it is a very important and in-depth process. She does not agree with the fiscal note's assertion regarding a decision such as this being taken lightly, necessarily resulting in an increasing number of students being placed in day treatment programs. **REP. ANDERSEN** expressed appreciation to the Committee and urged they recommend Do Concur.

#### HEARING ON HB 154

[Prior to officially opening the hearing on **HB 154**, **CHAIRMAN BILL GLASER** stated, under Senate Rule 30-70(2), "[a] standing or select committee may not hear legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent." Due to a medical emergency, the bill's sponsor, **REPRESENTATIVE RALPH LENHART**, was not able to attend the hearing. **CHAIRMAN GLASER** explained, given this circumstance, the full Senate authorized suspension of the rule for this particular bill on this date. He noted **REPRESENTATIVE JIM SHOCKLEY** would present the bill, and conveyed thoughts for **REP. LENHART's** recovery.]

Sponsor: **REPRESENTATIVE JIM SHOCKLEY**

Proponents: **David L. Senn, Executive Director, Teachers' Retirement System**  
**Bob Vogel, Director of Government Relations, Montana School Boards Association (MTSBA)**

Opponents: **NONE**

Informational Witnesses: **NONE**

Opening Statement by Sponsor:

*{Tape: 1; Side: A; Approx. Time Counter: 16.1 - 17}*

**REPRESENTATIVE JIM SHOCKLEY, HD 61, Ravalli County**, brought forward a bill which generally revises certain provisions of the Teachers' Retirement System. **REP. SHOCKLEY** expressed appreciation to the Senate for suspending the rule, thus allowing the bill to come forward.

Proponents' Testimony:

**{Tape: 1; Side: A; Approx. Time Counter: 17.3 - 30}**

**{Tape: 1; Side: B; Approx. Time Counter: 2.5 - 3.2}**

**David Senn, Executive Director, Teachers' Retirement System,** submitted written testimony **EXHIBIT (eds48a01)**.

**Bob Vogel, Director of Government Relations, MTSBA,** expressed his organization's support of the bill, and their appreciation to the sponsor and **REP. SHOCKLEY** for bringing the bill forward. **Mr. Vogel** believes it is in everyone's best interest to have a healthy, viable retirement system, and he thinks this bill accomplishes that goal.

**Questions from Committee Members and Responses:**

**{Tape: 1; Side: B; Approx. Time Counter: 3.5 - 9.6}**

**SENATOR JIM ELLIOTT,** referring to page four, lines 15 - 16, asked **Mr. Vogel** about the concerns he expressed. **Mr. Vogel** replied the language attempts to define "retirement system;" a definition which does not exist in PERS or any other place in the Code. Therefore, he does not believe it is appropriate or necessary in this part of the statute.

**SEN. ZOOK,** referring to Section Two of the bill, asked **Mr. Senn** to whom the report was formerly provided. **Mr. Senn** responded, while the report continues to be available on their website, the office no longer provides the report to the state auditor's office. His office does continue providing the report to the governor's office. **SEN. ZOOK,** stating he received e-mails from some retirees expressing concerns over the actuarial soundness of the program, asked **Mr. Senn** to speak to those concerns. **Mr. Senn** stated the teachers' retirement system was actuarially sound as of July 1, 2002; the completion date for the last actuarial evaluation. The system at that time had an unfunded liability of approximately \$435 million which will be amortized over 23.4 years if all assumptions are realized. The most vulnerable assumption at this time is "investment return." He believes this is true for public and private investments, and it is something everyone should be concerned about.

**SENATOR ROYAL JOHNSON,** referring to **Mr. Senn's** response to **SEN. ZOOK,** inquired about the program's assets necessary to cover \$435 million. **Mr. Senn** replied, at present, the teachers' retirement fund has slightly over \$2 billion. **SEN. JOHNSON** asked **Mr. Senn** if this means the program is very well funded. **Mr. Senn** replied in the affirmative. **SEN. JOHNSON** inquired whether this is the reason the program can increase benefits to beneficiaries on a

continuing basis. **Mr. Senn** replied the system is not raising benefits for retirees other than the one and one-half percent (1.5%) required by a bill passed in 1999. When that particular bill passed, employee contributions were increased by 1% and a new state general fund contribution of 1.1% was established. In other words, additional funding necessary to pay for increases was established by the bill. **SEN. JOHNSON** sought clarification regarding **Mr. Senn's** comment on the general fund contribution. **Mr. Senn** replied 1.1% of total salaries does come from the general fund.

**SEN. STORY**, referring to the proposed amendment, asked **REP. SHOCKLEY** if he thought it odd there is a "retirement system" which contains no definition of retirement. **REP. SHOCKLEY** replied in the affirmative.

**Closing by Sponsor:**

***{Tape: 1; Side: B; Approx. Time Counter: 9.7 - 10.1}***

**REP. SHOCKLEY** again expressed appreciation to the Committee and Senate for their assistance. He also expressed appreciation to **Mr. Senn** for his thorough analysis and presentation of the bill.

**EXECUTIVE ACTION ON HB 135**

***{Tape: 1; Side: B; Approx. Time Counter: 10.6 - 15.5}***

**Motion:** **SEN. COONEY** moved that HB 135 BE CONCURRED IN.

**Discussion:**

**SEN. STORY** requested authorization to pose additional questions to **Ms. Fabiano**; without objection. **SEN. STORY**, referring to **SEN. RYAN's** ANB example, inquired if it is correct a school's counts are done in year one with money being received in year two. **Ms. Fabiano** replied in the affirmative, explaining counts are done in October and February for the purpose of calculating the following year's ANB. Expanding slightly on the example for clarity, **SEN. STORY** stated, a school with a student who attends in the first and third years will be counted in those years and the school will receive money in the second and fourth years. The same student in attendance at a day treatment facility during the second and fourth years will not be counted during those two years for ANB purposes. However, the school will be paying costs associated with the student's education from their tuition fund,

and that fund will be reimbursed by the state for an amount equal to ANB. He asked if reimbursement will occur in the year the student is in treatment or the following year. **Ms. Fabiano** replied in the following year. She explained, typically, a school district will pay tuition in the following year because it is paid out of a levy fund. The district may not always know the cost of tuition until the end of the year and, therefore, need to levy that cost accordingly. **SEN. STORY** inquired if it is correct the institution providing treatment is not paid for a year. **Ms. Fabiano** replied, while not certain, the district could pay the cost out of their general fund, levy the following year, and then reverse the charges. **SEN. STORY** stated he was trying to determine whether a district could receive two ANB payments in one year, and zero in the next. **Ms. Fabiano** replied there will be no instance where a double payment is received.

**SEN. RYAN** asked whether, under current law, it is mandatory the cost be paid from the general fund or is it possible to pay the cost from the tuition fund. **Ms. Fabiano** replied, under current law, a district should not be paying this type of cost from their tuition fund because that fund is dedicated to payment of attendance costs between public schools.

**SEN. STORY** sought clarification on how the legislation will work in the event a student is in day treatment for only part of the year. **Ms. Fabiano** replied if, for example, the student were present during the October count they would be counted for one-half the year's ANB. The state would pay for the number of days the student was in attendance.

**Vote:** Motion that HB 135 be concurred in carried 9-0; with **SENATOR JEFF MANGAN** excused. **SENATOR DON RYAN** to carry.

#### EXECUTIVE ACTION ON HB 154

*{Tape: 1; Side: B; Approx. Time Counter: 15.7 - 23.6}*

**Motion:** **SEN. JOHNSON** moved that HB 154 BE CONCURRED IN.

**Discussion:**

**Motion:** **SENATOR MIKE COONEY** moved that HB 015401.ace DO PASS.

**Discussion:**



**SEN. JOHNSON** requested authorization to pose questions to **Mr. Senn**; without objection. He asked **Mr. Senn** whether this amendment was presented to the House. **Mr. Senn** replied in the negative, noting the legislation passed the House before this particular question was raised. **SEN. JOHNSON** inquired whether **Mr. Senn** was in agreement with the proposed amendment. **Mr. Senn** replied in the affirmative.

**SEN. ZOOK** sought authorization to pose questions to **Lance Melton, Executive Director, Montana School Boards Association (MTSBA)**; without objection. **SEN. ZOOK** sought clarification on why **MTSBA** wanted the definition of "retirement" struck from the bill. **Mr. Melton** stated his organization was contacted by various members who felt the otherwise innocuous looking definition of "retirement" could interfere with current practices which are already allowed. After reviewing all of Title Nineteen (MCA), his office was not able to locate any such definition. Accordingly, since no other retirement system has found it necessary to define the term, and because he believes the context of what retirement means is adequately defined by procedures in the law, he thinks it is unnecessary to do so here. For example, the laws says a person must terminate their employment with the employer; must not be employed by the employer for a specified length of time; and, should the employee work elsewhere, they may receive only a portion of their retirement. **Mr. Melton** believes all procedures necessary to conclusively define what retirement means are contained within Title Nineteen; thus, the placing of a definition might somehow change things. **Mr. Melton** also stated he does not think the sponsor or the Teachers' Retirement Program intended anything by the inclusion, he quite simply has concerned members. He provided an example of a retired professor who is currently in dispute with **TRS** over whether he can receive compensation from a particular fund while being fully retired. The District Court has indicated he may, however, the matter is still in dispute. **Mr. Melton** stated this concern was placed before the Teachers' Retirement Board. They did not see the definition as key to the legislation and to its' removal.

**SEN. ZOOK** requested authorization to pose additional questions to **Mr. Senn**; without objection. **SEN. ZOOK** asked **Mr. Senn** why the definition was included in the original bill. **Mr. Senn**, noting this was the first time he heard **MTSBA's** explanation, assured the Committee the definition's inclusion was in no manner related to the case presently before the Supreme Court. Referring to 20-19-716(1) [which discusses final salary, termination pay, and "retirement"], **Mr. Senn** stated a teacher may select termination pay at the time of retirement. But, when does retirement occur? The definition states retirement occurs when employment is

terminated and the person is eligible for benefits. This was the reason behind the definition's inclusion. **SEN. ZOOK**, noting **Mr. Melton's** concern and **Mr. Senn's** explanation, asked whether the Board would still agree to the definition being removed. **Mr. Senn** replied, given the stated concern, the definition should definitely be removed because his organization had no desire to raise such an issue.

**Vote:** Motion that HB 015401.ace DO PASS carried 9-0; with **SEN. MANGAN** excused.

**Motion/Vote:** **SEN. JOHNSON** moved that HB 154 BE CONCURRED IN AS AMENDED. Motion carried 9-0; with **SEN. MANGAN** excused. **SENATOR ROYAL JOHNSON** to carry.

#### EXECUTIVE ACTION ON HB 400

*{Tape: 1; Side: B; Approx. Time Counter: 24.3 - 31}*  
*{Tape: 2; Side: A; Approx. Time Counter: 0.2 - 4.6}*

**Motion:** **SEN. COONEY** moved that HB 400 BE CONCURRED IN.

#### Discussion:

**SEN. ZOOK** stated, given testimony provided, the bill is very controversial in nature and therefore he is not able to support the bill.

**Substitute Motion:** **SEN. ZOOK** made a substitute motion that HB 400 BE INDEFINITELY POSTPONED.

#### Discussion:

A brief discussion occurred regarding the correctness of tabling motions as opposed to tabling bills.

**SEN. RYAN** sought clarification regarding public sentiment about meetings being cancelled during the teachers' strike in Billings.

**SEN. JOHNSON**, conceding the extreme contention between the parties and the strike's numerous issues, stated the various parties worked diligently all hours of the day and night in an attempt to resolve the issues. He explained the prescribed procedure stated any two persons or the chairman could call a meeting. Negotiations occurred on one side of the street, with public meetings being called where a tremendous number of people effected by the negotiations gathered on the other side. At

various times, no progress was made during the day and meetings were cancelled. **SEN. JOHNSON** stated he believes this is truly a local issue which should remain a local issue. Whether any party was right or wrong, the events were a local concern. He believes this legislation will interfere with local processes and is therefore opposed to the bill.

**SEN. RYAN** believes if a Board were to establish guidelines, and discussions regarding timeliness of notification and so forth arose, the result may be a prolonged strike. If the object is to get students and teachers back in the classroom, a twenty-four hour notice requirement may keep people out of work and kids out of school. **SEN. RYAN** stated he is in agreement with **SEN. JOHNSON's** assertion that we may be adding a problem to the process.

**SEN. ZOOK** expressed his certainty of the bill's good intentions, however, he does not believe it will provide the correct answer.

**SENATOR MIKE COONEY** indicated, while he has no personal experience with this type of matter, it may well be the legislature needs to look at the procedures for cancelling meetings. He agreed with **SEN. ZOOK** regarding the intentions of the bill, particularly noting it is not prescriptive in nature. While this may not be the correct vehicle, he does believe the body should be mindful of the bill's goal.

**SEN. ZOOK** stated there is nothing to prevent a school board from adopting this type of procedure in the absence of legislation.

**SEN. STORY** stated he agreed with the comments of **SEN. RYAN**. He explained in Billings the Board called for meetings every night at 5:00, however, after a few days of no progress and a very unhappy public, the Board decided not to meet every night. They did however retain the schedule so in the event progress was made they could hold a public meeting. In other words, the problem there was the statutory requirements regarding how open meetings are called and scheduled.

**Vote: Motion that HB 400 be INDEFINITELY POSTPONED carried 8-1 with COONEY voting NO and MANGAN excused.**

**ADJOURNMENT**

Adjournment: 5:00 P.M.

---

SEN. BILL GLASER, Chairman

---

TARI ELAM, Secretary

BG/TE

**EXHIBIT (eds48aad)**